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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Assessment and Collection	)	MD Docket No. 96-186
of Regulatory Fees for	)	
Fiscal Year 1997	)	

COMMENTS OF PANAMSAT CORPORATION

PanAmSat Corporation ("PanAmSat"), by its attorneys, submits these comments regarding the above-referenced Notice of Proposed Rulemaking ("NPRM").

INTRODUCTION AND BACKGROUND

In the NPRM, the Commission has proposed a series of changes to its regulatory fee schedule in order to recover the amount of fees that Congress, pursuant to Section 9(a) of the Communications Act of 1934, as amended (the "Communications Act"), has required the Commission to collect for 1997. As part of this effort, the Commission has proposed to increase regulatory fees for geostationary space stations by 40% from $70,575 to $98,575. Moreover, based on the Commission's cost accounting data, geostationary satellite fees can be expected to increase by a similar amount next year.

PanAmSat opposes these increases. Although it is impossible to properly analyze the basis for the Commission's fee decision without more data regarding the specific costs attributed by the Commission to geostationary space stations, it is apparent, based on information that is publicly available, that the cost figure used in the NPRM is vastly out of proportion to the actual costs of regulating geostationary space stations. As a result, the regulatory fee proposed to be assessed against geostationary space station operators bears little, if any, relation to the benefits conferred by Commission regulation of these services. This disjunction not only violates the terms of the Communications Act, but also the Constitution.

DISCUSSION

I. The Proposed Geostationary Space Station Fees Are Not Reasonably Related To The Benefits Conferred By Commission Regulation.

Section 9(b) of the Communications Act requires the Commission, in deriving its regulatory fees, to ensure that fees assessed on regulated entities are reasonably related to the benefits conferred upon these same entities by Commission regulation.[1] The fees proposed in the NPRM for geostationary space station operators fail to satisfy this requirement.

In the NPRM, the Commission has proposed an increase in geostationary space station regulatory fees from $70,575 to $98,575. The proposed new fee requirement was established by: (1) adding the direct regulatory costs associated with geostationary space stations, as established by the Commission's cost accounting program, to a *pro rata* share of overhead and indirect costs; (2) adjusting this figure, on a *pro rata* basis, to reflect the fact that Congress has required the Commission to recover more regulatory costs than actually were incurred by the Commission; (3) capping the increase at 25%; and (4) dividing by the number of space stations.

Applying this methodology, the Commission determined that the adjusted activity cost of regulating geostationary space stations is $5,047,963, which is approximately 56% greater than the revenue that would be recovered from space station operators if 1996 fees simply were increased *pro rata* to recover the amount to be collected for 1997. Capping the increase at 25%, the Commission determined that it should recover $4,041,601 in 1997 from the operators of 41 space stations, which results in a fee of $98,575 per space station.[2]

Although the Commission's approach to these calculations is sound in principle, the validity of the resulting figures (*i.e.*, the degree to which the fees assessed are "reasonably related" to the benefits conferred) hinges entirely upon the accuracy of the direct cost figure derived from the Commission's cost accounting program. In the case of geostationary space stations, the accuracy of this figure is highly suspect.

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[1] See 47 U.S.C. § 159(b)(1)(A).
[2] NPRM at Appendix E.

In the NPRM, the Commission attributes $4,596,437 to direct regulatory costs associated with 41 geostationary space stations.[3] This figure is facially unreasonable. By way of comparison, the Commission attributed the following direct regulatory costs to other services:

- Intelsat/Inmarsat signatory functions — $7,441
- low earth orbit space stations — $4,451
- CMRS Mobile Services — $8,656,765
- All IXCs, LECs, and CAPs — $37,118,528
- VHF Television —$3,660,252

Thus, direct costs attributed by the Commission to 41 geostationary satellites are approximately half that attributed to all CMRS services, 1/8th that attributed to IXCs, LECs, and CAPs, nearly $1 million more than that attributed to VHF television, and several hundred times the amount attributed to signatory activities or to low earth orbit satellites.

Yet, for instance, the IXC, LEC, and CAP industry dwarfs the satellite industry. In 1994, the telecommunications industry generated almost $200 billion in revenue.[4] The entire satellite industry, on the other hand, is projected to generate only $10 billion by the year 2000, or approximately 1/20th of that generated by telephone operations in 1994.[5] It simply defies logic that the Commission could spend $4.5 million regulating the relatively small satellite industry while spending only $37 million regulating wireline telephone services nationwide.

In point of fact, once satellite services are authorized, the Commission incurs very little regulatory expense in overseeing satellite operations. Satellite services typically are provided on a non-common carrier basis (obviating Title II tariff and enforcement activities), the Commission rarely becomes involved in interference issues for licensed satellites, and, although the Commission occasionally conducts rulemaking proceedings (many of which involve new or proposed services), these

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[3] NPRM at Appendix D.
[4] See Public Notice 61365 (Feb. 5, 1996).
[5] The Economist (Oct. 5, 1996) at 102.

proceedings are minimal in comparison to work on rulemakings done with respect to, for example, telephone services.[6] For this reason, the International Bureau staff traditionally has been much smaller than the staff of other Commission Bureaus.

The vast majority of Commission resources expended on geostationary satellite services are devoted to the satellite licensing process. These costs, however, already are recovered through the substantial application fees paid by satellite applicants.[7] The only other costs of any significance relating to satellite regulation incurred this year are those associated with WRC-97. However, although many of these costs were incurred by the International Bureau, they were not by any means incurred exclusively for the benefit of geostationary satellites. Indeed, a significant portion of the WRC-97 costs involved LEO satellite issues, yet only $4,451 are assigned in the NPRM to direct LEO regulatory expenses. Thus, it cannot be that WRC-97 costs assigned to geostationary satellites account for the attribution of over $4.5 million in direct costs to this category.

In short, the cost figure of $4,596,437 is completely out of proportion to the degree of regulatory oversight exercised by the Commission over geostationary space stations. Consequently, application of the Commission's fee computation methodology leads to the imposition of a regulatory fee in this service that bears little, if any, relation to the benefits conferred. As such, the proposed regulatory fee for geostationary satellites is inconsistent with the text and purpose of Section 9 of the Communications Act.

II. The Imposition Of Fees That Are Disproportional To The Benefits Conferred By Regulation, In Combination With The Jurisdiction Stripping Provisions Of Section 9, Results In An Unconstitutional Tax.

The lack of correlation between the fees assessed by the Commission and the benefits conferred also raises serious constitutional concerns. To begin with, regulatory assessments are "fees" only when they bear a substantial relation to the

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[6] In the process of implementing the Telecommunications Act of 1996, the Commission has issued an Interconnection Order of approximately 800 pages, orders and notices on dialing parity, access charge reform, and number portability running into the hundreds of pages, and a recommended decision on universal service, which contains almost five hundred pages. By contrast, the Commission's recent order in IB Docket No. 95-117 regarding changes to the rules and regulations for satellite application and licensing procedures — terminating a significant rulemaking proceeding in the satellite services — contains approximately 50 pages, including appendices.

[7] Applicants pay over $85,000 per satellite in application and licensing fees. 47 C.F.R. § 1.1107.

costs of regulation; assessments that are not so related are "taxes," not fees.[8] Although Congress may delegate its authority to tax to an administrative agency,[9] it may do so only so long as it provides standards to guide the agency "such that a court could ascertain whether the will of Congress has been obeyed."[10] This so-called "nondelegation doctrine" is premised on the notion that "private rights [will be] protected by access to courts to test the application" of the delegation.[11]

In this case, the delegation of its taxing authority fails because Congress has removed the jurisdiction of the federal courts to test the application of the delegation.[12] Although Congress may, in certain circumstances remove federal court jurisdiction over any issue,[13] Congress may not, consistent with the Constitution, combine a delegation of its taxing authority with a jurisdiction stripping provision. If it could, Congress could confer unfettered discretion upon an unelected body to lay and collect taxes. This proposition runs contrary to the most fundamental precepts of our constitutional democracy.[14]

Consequently, not only is the Commission's proposed increase in satellite regulatory fees inconsistent with the express terms of the Communications Act, but, if adopted, they would raise serious questions regarding the constitutionality of the entire regulatory fee scheme.

CONCLUSION

For the reasons set forth above, PanAmSat requests that the Commission reevaluate its cost allocation methodology and lower the regulatory fee to be paid by

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[8] See, e.g., NCTA v. United States, 415 U.S. 336 (1974); cf. Engine Manufacturers Ass'n v. EPA, 20 F.3d 1177 (1994).

[9] Skinner v. Mid-America Pipeline Co., 490 U.S. 212 (1989).

[10] Skinner, 490 U.S. at 218 (quoting Mistretta v. United States, 488 U.S. 361 (1989)).

[11] Skinner, 490 U.S. at 219.

[12] 47 U.S.C. § 159(b)(2) & (b)(3).

[13] See Sheldon v. Sill, 49 U.S. (8 How.) 441 (1850); see also Kline v. Burke Construction Co., 260 U.S. 226 (1922); Lauf v. E.G. Shinner & Co., 303 U.S. 323 (1938); Lockerty v. Phillips, 319 U.S. 182 (1943).

[14] In any event, even if the regulatory fees are, in fact, fees rather than taxes notwithstanding the imbalance between the amounts charged and the benefits conferred, then, under all of the circumstances, the fees violate the Fifth Amendment of the Constitution by taking property arbitrarily and without due process of law.

geostationary space station operators for 1997 to more closely reflect the actual costs of regulating geostationary space stations.

Respectfully submitted,

PANAMSAT CORPORATION

/s/ W. Kenneth Ferree
Joseph A. Godles
W. Kenneth Ferree

GOLDBERG, GODLES, WIENER & WRIGHT
1229 Nineteenth Street, NW
Washington, DC 20036
(202) 429-4900

Its Attorneys

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